

Chairperson and Members
of the State Board of Control
Page Four
August 12, 1981

quantified objectives need not be identical to the identified existing housing needs, but should establish the maximum number of housing units that can be constructed, rehabilitated, and conserved over a five-year time frame.

"(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

"(1) Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including rental housing, factory-built housing and mobilehomes, in order to meet the community's housing goals as identified in subdivision (b).

"(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

"(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing.

"(4) Conserve and improve the condition of the existing affordable housing stock.

Chairperson and Members
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"(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, or color.

"The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort." (Emphasis added.)

AB-2853 did "enact substantially more detailed requirements for the housing element" as has been observed by the Legislative Counsel in his Digest to Chapter 1143, Statutes of 1980. To suggest to the contrary, that is that AB-2853 reduced local governments' planning obligations, is simply not supported by fact or law.

Because of the detail of AB-2853, local agencies could maintain that the legislation constitutes the initial step to substitute statewide comprehensive zoning for local control of land use decisions.

The HCD statement that expenditure of local revenues is not required for housing development purposes is technically correct. However, as set forth on page 5 of their memorandum, the implication is that local revenue will not be required to meet the goal of establishing a maximum number of housing units that should be constructed, rehabilitated or conserved over a five-year time frame as required by Government Code Section 65583(b). This is simply not the case. The SB-90 claims at issue before your Board deal with the costs associated with the preparation of the Housing Element of a local agency's general plan, not the **physical** development of housing.

Likewise, the reference to the statement by AB-2853's author is not indicative of the Legislature's intent as it is a well settled rule of law that the opinion of individual members of a legislative body

Chairperson and Members
of the State Board of Control
Page Six
August 12, 1981.

is not admissible for the purpose of showing what in fact was intended or meant by an act. Ex Parte Goodrich (1911) 160 Cal. 410, 417. The City of El Monte would maintain that the statement should be stricken in its entirety.

A continuing theme of HCD is that the explicit detailing of the planning process as is set forth in AB-2853 was previously mandated in the 1977 Guidelines of the department (Title 25 California Administrative Code Sections 6400 et seq.) and therefore does not constitute a new program or increased level of service in an existing program.

The City of El Monte disagrees with this analysis and offers the following legal support for its position that a State-mandated cost was effected by AB-2853.

In addition to the authority previously set forth, we would note that Article XIII B, Section 6 of the State Constitution provides as follows:

Whenever the Legislature or any State agency mandates a new program or a higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

* * *

"(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." (Emphasis added.)

The "guidelines" purportedly issued by HCD in 1971 are, as they have conceded, invalid because they do not have the force of law because they were not promulgated in a manner consistent with the Administrative Procedure Act of the State of California. Therefore, we must examine the regulations which were issued under the authority of AB-1X, Chapter 1 of 1977.

Chairperson and Members
of the State Board of Control
Page Seven
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In interpreting language of the State Constitution, which is necessarily couched in general terms or language," it is essential that "it not be interpreted according to narrow or supertechnical principles, but liberally and on broad general lines." See, Amador Valley Joint Union High School Dist. v. State Board of Equalization (1978) 22 Cal.3d 208, 244. Put another way:

"A constitutional amendment should be construed in accord with the natural and ordinary meaning of its words," Amador Valley Joint Union High School Dist., supra at 245.

In this instance there is a clear and unequivocal constitutional obligation under Article XIII B for reimbursement with respect to Chapter 1143, Stats. of 1980. This obligation was reaffirmed by the Court in the Bownds case when it described the effect of the instant legislation.

Assuming, without deciding, that AB-2853 did not in fact create new duties for local governments, then the 1977 regulations themselves should be analyzed for their SB-90 effect. It is anticipated that HCD would argue that Article XIII B would be inapplicable to their previous regulations because they were in effect prior to the effective date of Article XIII B, July 1, 1980. However, the Attorney General has recently opined concerning this issue. See, 64 Ops. Cal. Atty. Gen. 261, 263 (1981), wherein the followings noted:

"It is noted that Article XIII B, Section 6, subdivision (c) sets forth a January 1, 1975 cutoff date for certain purposes. Legislative mandates are implementing executive orders or regulations in effect prior to that date may, but need not be, funded by the Legislature. Although Article XIII B, Section 6 says nothing specifically with respect to "mandates" between July 1, 1975 and the effective date of Article XIII B, that is July 1, 1980 (see, Cal. Const., Art. XIII B, §10), we conclude-at the only logical inference to be drawn therefrom-that such "mandates" are to be included within the scope of Article XIII B. And so concluding, we do not mean to say that Article XIII B is to

Chairperson and Members
of the State Board of Control
Page Eight
August 12, 1981

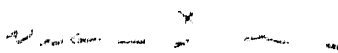
be applied retroactively but only that it shall operate prospective after July 1, 1980, its effective date, with respect to mandates both after that date and those in effect between January 1, 1975; such date."
(Emphasis added.)

Thus, if what HCD says is true, which it is not, then the regulations themselves are subject to reimbursement. Surely this Board would not have the claimants place form over substance in this manner. However, it exposes the severe factual and legal inadequacies of the position of HCD on this issue. If AB-2853 doesn't constitute a mandate, then the regulations themselves did and they are reimbursable. But, the language of AB-2853 and the Bownds case clearly mitigate against such an absurd result.

It is again noted that HCD on page 7 of its memorandum indicates that the Bownds case is "not the law until a Supreme Court decision affirming this view has taken place." We would note that on March 11, 1981, four months prior to the HCD memo, the Supreme Court denied hearing in the Bownds case, thereby effecting the very Supreme Court decision which HCD now seeks.

Again, in summary, the City of El Monte believes it has shown by competent evidence that Chapter 1143, Statutes of 1980, constitutes a State-mandated cost as defined by the Revenue and Taxation Code and the State Constitution. We therefore respectfully request that a mandate be found in this matter by your Board.

Very truly yours,


William D. Ross
for MESERVE, MUMPER & HUGHES

WDR/je

cc: Carolyn Burton
Deputy General Counsel
State of California
Department of Housing and Community Development

Resolution
Att. D
Item 100

July 20, 1981

RECEIVED

JUL 23 1981

STATE BOARD OF CONTROL

Chairperson and Members
State Board of Control
926 J Street, Suite 300
Sacramento, CA 95814

Re: Chapter 1143, Statutes of 1980
Claim of the City of El Monte for Increased
Level of Service with regard to General Plan
Housing Element

Dear Chairperson and Members of the State Board of Control:

It has come to our attention that the City of El Monte has filed a claim for reimbursement from the State of California for costs incurred in complying with Chapter 1143, Statutes of 1980, dealing with specific requirements for the Housing Element of its General Plan.. This legislation was passed after the effective date of Article XIII B of the California State Constitution, also known as Proposition 4, which required, among other things, that the State must provide a subvention- of funds to reimburse local-government for costs of any new program or any increased level of service caused by legislation, or State agency action.

The City of Irvine has incurred costs to comply with the Housing Element requirements, of Chapter 1143, Statutes of 1980, and we wish to express support for the claim of the City of El Monte for reimbursement for costs-associated with Chapter 1143, Statutes of 1980.

The City of Irvine has also incurred significant expenses in connection with our participation as amicus curiae in re. Bownds v. City of Glendale, 113 C.A.3d 875 (1980). We find

Chairperson and Members
July 20, 1981
Page 2

it most distressing that, despite' this final determination by 'the California judicial system, the Department of Housing and Community Development still seems insistent that its guidelines, adopted prior to January 1, 1973, were mandatory' and binding upon the cities. This position is contrary to the fundamental philosophy of our judicial system and the value of judicial precedent in the State of California and deserves to be rejected out of hand.

. Thank you for your consideration.

Very truly yours,



DAVID G. SILLS, MAYOR
City of Irvine

DGS/bw

cc: City Council
City Manager
City Attorney
Director Community Development

City of Concord

File
cc

PHONE: (415) 671-3291

July 29, 1981

RECEIVED

JUL 30 1981

STATE BOARD OF CONTROL

CITY COUNCIL

June V. Bulman, Mayor
William H. Dixon
Richard T. La Pointe
Diane Longshore
Stephen L. Weir
Farrel A. Stewart, City Manager

Mr. Ray Banion
Assistant to the Executive
Secretary
State Board of Control
926 J Street, Suite 300
Sacramento, California 95814

Dear Mr. Banion:

Enclosed is a certified copy of the Concord City Council's Resolution No. 81-6584 supporting the claim of the City of El Monte for State-Mandated costs associated with Chapter 1143, Statutes of 1980.

Very truly yours,

Bernadette Carroll

(MS.) BERNADETTE CARROLL
City Clerk

BC/pgm

Enclosure

O

1 BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD

2 COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

3 A Resolution of the City of
4 Concord Supporting The Claim
5 of the City of El Monte for
6 State-Mandated Costs Associated
7 With Chapter 1143, Statutes of
8 1980.

RESOLUTION NO. 81- 6584

7 WHEREAS, the City of El Monte has filed a claim for reim-
8 bursement from the State of California for costs incurred in
9 complying with Chapter 1143, Statutes of 1980, dealing with
10 specific requirements for the Housing Element of its General
11 Plan; and

12 WHEREAS, said legislation was passed after the effective
13 date of Article XIII B of the California State Constitution,
14 also known as Proposition 4, which required, among other
15 things, that the State must provide a subvention of funds to
16 reimburse local government for costs of any new program or any
17 increased level of service caused by legislation or State
18 agency action; and

19 WHEREAS, the City of Concord is incurring and will continue
20 to incur costs to comply with the Housing Element requirements
21 of Chapter 1143, Statutes of 1980.

22 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD
23 DOES RESOLVE AS FOLLOWS:

24 Section 1. Declares its unanimous support for the claim of
25 the City of El Monte for reimbursement for costs associated
26 with Chapter 1143, Statutes of 1980.

27 Section 2. The City Clerk is authorized to transmit a copy
28 of this Resolution to the City of El Monte and the State Board

1 of Control and other interested persons or agencies.

2 Section 3. This resolution shall become effective immedi-
3 ately upon its passage and adoption.

4 PASSED AND ADOPTED by the City Council of the City of Con-
5 cord on the 27th day of July, 1981, by the follow-
6 ing vote:

7 AYES: Councilmember - W.Dixon, R.La Pointe, D.Longshore, S.Weir, J.Bulma

NOES: Councilmember - None

9 ABSENT: Councilmember - None

10 I HEREBY CERTIFY that the foregoing resolution was duly and
11 regularly adopted at a regular meeting of the City Council of
12 the City of Concord on July 27, 1981.

13
14 
15 BERNADETTE CARROLL, CITY CLERK

16 APPROVED AS TO FORM

17 
18 City Attorney

CITY OF LARKSPUR

MARIN COUNTY, CALIFORNIA 94939

P. O. BOX 585 • 400 MAGNOLIA AVENUE

PHONE (415) 924-2405

RECEIVED

AUG 14 1981

August 4, 1981

STATE BOARD OF CONTROL

Mr. Kenneth Cory, Controller
State of California
Sacramento, CA 95805

Dear Mr. Cory:

The City of Larkspur, in following the requirements of Assembly Bill 2853, has expended considerable funds updating our city housing element. It is my understanding that Revenue and Taxation Code 2253, establishes that a city may seek reimbursement for our costs.

Please consider this letter as the City of Larkspur's claim for \$13,250.00 which represent the costs of our consultants service, plus an additional amount reflecting staff time.

Please advise the appropriate timing to submit this matter to the Board of Control.

Sincerely,


Harlan Barry
City Manager

HB: ca

cc: Steve Solomon

CITY CLERK

333 WEST OCEAN BOULEVARD . LONG BEACH, CALIFORNIA 90802 . (213) 590-6101

RECEIVED

AUG 11 1981

August 7, 1981

STATE BOARD OF CONTROL

State Board of Control
926 "J" Street
Suite 300
Sacramento, California 95815

Attention: Gary L. Longholm
Executive Secretary

Gentlemen:

We are transmitting herewith a certified copy of Resolution No. C-23212, adopted by the City Council of the City of Long Beach at its meeting of August 4, 1981 entitled as follows:

A RESOLUTION OF THE CITY OF LONG BEACH SUPPORTING
THE CLAIM OF THE CITY OF EL MONTE FOR STATE-MANDATED
COSTS ASSOCIATED WITH CHAPTER 1143, STATUTES OF 1980.

It will be appreciated if you will distribute to each of your members a copy of this resolution.

Very truly yours,


SHELBA POWELL
City Clerk

SP:at
Enclosure

RESOLUTION NO. C- 23212

A RESOLUTION OF THE CITY OF LONG

BEACH SUPPORTING THE CLAIM OF THE CITY
OF EL MONTE FOR STATE-MANDATED COSTS
ASSOCIATED WITH CHAPTER 1143, STATUTES
OF 1980.

WHEREAS, the City of El Monte in Los Angeles County has
filed a claim for reimbursement from the State of California for
costs incurred in complying with Chapter 1143, Statutes of 1980,
dealing with specific requirements for the Housing Element of its
General Plan; and

WHEREAS, said legislation was passed after the effective
date of Article XIIIIB of the California State Constitution, also
known as Proposition 4, which required, among other things, that
the State must provide a subvention of funds to reimburse local
government for costs of any new program or any increased level of
service caused by legislation or State agency action; and

WHEREAS, the substantial costs to cities of compliance
with the provisions of Chapter 1143 constitute a reimbursable new
mandate under Article XIIIIB. The opposition to reimbursement by
the State Department of Housing and Community Development is with-
out merit since it is based upon HCD's self-serving view of the
State Housing Element Guidelines as being "mandatory" when the
appellate courts have definitively ruled that they are advisory
only; and

*

Robert W. Parkin
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

APPROVED AND CORRECT COPY
CITY CLERK OF THE CITY OF LONG BEACH
BY
DATE

Robert W. Parkin
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Telephone 590-6061

WHEREAS, the City of Long Beach is incurring substantial costs to comply with the state-imposed housing element requirement of Chapter 1143.

NOW, THEREFORE, the members of the City Council of the City of Long Beach resolve as follows:

Section 1. That the City Council of the City of Long Beach declares its unanimous support for the claim of the City of El Monte for eligibility for reimbursement for costs associated with Chapter 1143, Statutes of 1980 and urges the State Board of Control to authorize and direct state reimbursement of that claim in an amount it deems sufficient and proper to legally reimburse El Monte for its costs in the light of the facts surrounding the claim; and

Sec. 2. That copies of this resolution be transmitted to each of the members of the State Board of Control, (including Councilmember Yaroslavsky and Supervisor Cook), to Senator Ollie Speraw, Assemblymen Dennis Brown and David Elder, to the Mayor and the City Attorney of the City of El Monte and to the Sacramento and Los Angeles offices of the League of California Cities.

I certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of

August 4, 1981, by the following vote:

Ayes: Councilmembers: Edgerton, Clark, Wilson, Tuttle, Rubley
Wilder.

Noes: Councilmembers: None.

Absent: Councilmembers: Hall, Kell, Sato.


City Clerk

AUG 8 1981

RESOLUTION NO. 4072

STATE BOARD OF CONTROL

RESOLUTION OF THE CITY OF WALNUT CREEK SUPPORT-
ING THE CLAIM OF THE CITY OF EL MONTE FOR STATE-
MANDATED COSTS ASSOCIATED WITH CHAPTER 1143,
STATUTES OF 1980

WHEREAS the City of El Monte has filed a claim for reimbursement from the State of California for costs incurred in complying with Chapter 1143, Statutes of 1980, dealing with specific requirements for the Housing Element of its General Plan; and

WHEREAS said legislation was passed after the effective date of Article XIII B of the California State Constitution, also known as Proposition 4, which required, among other things, that the State must provide a subvention of funds to reimburse local government for costs of any new program or any increased level of service caused by legislation or State agency action; and

WHEREAS the City of Walnut Creek is incurring costs to comply with the Housing Element requirements of Chapter 1143, Statutes of 1980,

NOW THEREFORE the City Council of the City of Walnut Creek does resolve as follows:

Section 1. The City Council of the City of Walnut Creek declares its unanimous support for the claim of the City of El Monte for reimbursement for costs associated with Chapter 1143, Statutes of 1980.

Section 2. The City Clerk is directed to forward a certified copy of this resolution to the attention of the State Board of Control.

Section 3. This resolution shall become effective immediately upon its final passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Walnut Creek at a regular meeting thereof held on the 4th day of August, 1981 by the following called vote:

AYES:	Councilmembers:	Armstrong, Kovar, Hildebrand, Murray Mayor Hazard
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

/s/ James L. Hazard
Mayor of the City of Walnut Creek

ATTEST:

/s/ Mary L. Lucas
City Clerk of the City of Walnut Creek

I HEREBY CERTIFY that the foregoing resolution was duly and regularly passed and adopted by the City Council of the City of Walnut Creek, County of Contra Costa, State of California at a regular meeting of said Council held on the 4th day of August, 1981.

Mary L. Lucas
by Marjorie Lee Deputy
City Clerk of the City of Walnut Creek

CITY OF LARKSPUR .

MARIN COUNTY, CALIFORNIA 94939

P. O. BOX 585 • 400 MAGNOLIA AVENUE

PHONE (415) 924-2405

RECEIVED
AUG 13 1981
STATE BOARD OF CONTROL

August 1f, 1981

Mr. Ray Banion
Assistant to the Executive Secretary
State Board of Control
926 J Street, Suite 300
Sacramento, CA 95814

Re: Chapter 1143, Statutes of 1980; Claim of
City of El Monte for Increased Level of
Service with regard to General Plan
Housing Element Requirements

Dear Mr. Banion:

The City of Larkspur understands the State Board of Control will hear the City of El Monte's claim on August 19th for reimbursement of costs in conjunction with preparation of their new housing element.

The City of Larkspur by letter of State Controller Kenneth Cory, has requested the appropriate procedure so that we also may file a claim;

Please be advised that the City Council of the City of Larkspur supports El Monte's claim. There can be no question that AB-2853 mandates costs on local agencies.

We look forward to your favorable action on El Monte's claim as well as the City of Larkspur's which will be submitted in due course,

Sincerely,


Harlan Barry
City Manager

HB: ca

cc: Scott R. Keene, Esq.
William D. Ross, Esq.
Meserve, Mumper & Hughes

RECEIVED

AUG 13 1981

STATE BOARD OF CONTROL

RESOLUTION OF THE CITY OF NOVATO
SUPPORTING THE CLAIM OF THE CITY OF EL MONTE
FOR STATE-MANDATED COSTS ASSOCIATED WITH
CHAPTER 1143, STATUTES OF 1980

CERTIFIED A TRUE COPY

CITY CLERK, CITY OF NOVATO

RESOLUTION NO. 90-81

WHEREAS, the City of El Monte has filed a claim for reimbursement from the State of California for costs incurred in complying with Chapter 1143, Statutes of 1980, dealing with specific requirements for the Housing Element of its General Plan;

WHEREAS, said legislation was passed after the effective date of Article XIIIIB of the California State Constitution, also known as Proposition 4, which required, among other things, that the State must provide a subvention of funds to reimburse local government for costs of any new program or any increased level of service caused by legislation or State agency action; and

WHEREAS, the City of Novato has, or shortly will, incur costs to comply with the Housing Element requirements of Chapter 1143, Statutes of 1980;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Novato declares its unanimous support for the claim of the City of El Monte for reimbursement for costs associated with Chapter 1143, Statutes of 1980.

The foregoing resolution was adopted by the City Council of the City of Novato on the 11th day of August 1981.

Council Members STOCKWELL, TURNER, U'REN, STOMPE

Absent: Council Member U'REN

Rogey L. High
City of Novato, Clerk



CITY OF PETALUMA, *California*

POST AND ENGLISH STREETS 94952 • TELEPHONE (707) 668-2613

August 18, 1981

RECEIVED
AUG 20 1981
STATE BOARD OF CONTROL

SPECIAL DELIVERY

State Board of Control
926 J Street, Suite 300
Sacramento, CA 95814

Subject: Hearing on test claim of City of El Monte - Reimbursement
of costs as a result of New Housing Mandates - August 19, 1981

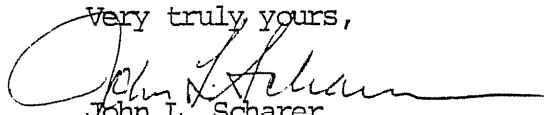
Gentlemen:

Enclosed is a certified copy of the City of Petaluma's Resolution No. 9261N.C.S. adopted by the City Council at its regular meeting on August 17, 1981.

The resolution relates to support for the City of El Monte's test claim which your board will be hearing on August 19, 1981. Petaluma supports this claim, and earnestly urges your favorable consideration.

The City of Petaluma will shortly incur costs to comply with the Housing Element requirements of Chapter 1143, Statutes of 1980, and will need to be reimbursed for its costs to comply with the Legislature's requirements.

Very truly yours,


John L. Scharer
Acting, City Manager

JLS:ad

cc: Meserve, Mumper & Hughes
League of California Cities
City Clerk

City of El Monte, CA
enc (1)

Resolution No. 9261 N. C. S. of the City of Petaluma, California

AUG 14 1981

16

SUPPORTING THE CLAIM OF THE CITY OF
EL MONTE FOR STATE-MANDATED COSTS
ASSOCIATED WITH CHAPTER 1143,
STATUTES OF 1980

RECEIVED

AUG 20 1981

STATE BOARD OF CONTROL

WHEREAS, the City of El Monte has filed a claim for reimbursement from the State of California for costs incurred in complying with Chapter 1143, Statutes of 1980, dealing with specific requirements for the Housing Element of its General Plan;

WHEREAS, said legislation was passed after the effective date of Article XIIIIB of the California State Constitution, also known as Proposition 4, which required, among other things, that the State must provide a subvention of funds to reimburse local government for costs of any new program or any increased level of service caused by legislation or State agency action; and

WHEREAS, the City of Petaluma has, or shortly will, incur costs to comply with the Housing Element requirements of Chapter 1143, Statutes of 1980;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Petaluma declares its unanimous support for the claim of the City of El Monte for reimbursement for costs associated with Chapter 1143, Statutes of 1980.

THE WITHIN INSTRUMENT IS A
TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.

AUG 18 1981

ATTEST:
PATRICIA E. BERNARD
CITY CLERK - CITY OF PETALUMA
BY: *Patricia E. Bernard*
DEPUTY CITY CLERK

Under the power and authority conferred upon this Council by the Charter of said City.

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a (Regular) ~~(Ordinary)~~ meeting on the17th..... day of August....., 1981, by the following vote :

Approved as to
form

Patricia E. Bernard
City Attorney

AYES: COUNCILMEN PERRY/HARBERTSON/BOND/BATTAGLIA/VICE -MAYOR CAVANAGH/MAYOR MATTEI

NOES: NONE

ABSENT: COUNCILMAN BALSHAW

ATTEST: *Patricia E. Bernard*
City Clerk

J. H. Mattei
Mayor



CITY OF PETALUMA, *California*

POST AND ENGLISH STREETS 94952 • TELEPHONE (707) 43-2613

August 18, 1981

SPECIAL DELIVERY

State Board of Control
926 J Street, Suite 300
Sacramento, CA 95814

Subject: Hearing on test claim of City of El Monte - Reimbursement
of costs as a result of New Housing Mandates - August 19, 1981

Gentlemen:

Enclosed is a certified copy of the City of Petaluma's Resolution No. 9261N.C.S. adopted by the City Council at its regular meeting on August 17, 1981.

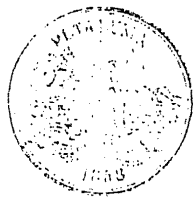
The resolution relates to support for the City of El Monte's test claim which your board will be hearing on August 19, 1981. Petaluma supports this claim, and earnestly urges your favorable consideration.

The City of Petaluma will shortly incur costs to comply with the Housing Element requirements of Chapter 1143, Statutes of 1980, and will need to be reimbursed for its costs to comply with the Legislature's requirements.

Very truly yours,

John L. Scharer
Acting, City Manager

JLS:ad
cc: Meserve, Mumper & Hughes
League of California Cities
City Clerk
City of El Monte, CA
enc (1)



CITY OF PETALUMA, *California*

POST AND ENGLISH STREETS 94952 • TELEPHONE (707) 763-2613

Office of City Clerk
August 18, 1981

Meserve, Mumper & Hughes
Attorneys Office
35th Floor
333 South Hope Street
Los Angeles, CA 90071

Subject: City of El Monte claim for reimbursement-Chapter 1143
Housing Element of General Plan

Attention: Mr. William D. Ross

Dear Mr. Ross:

Enclosed is a certified copy of Resolution No. 9261N.C.S.
adopted by the Petaluma City Council at its regular meeting on August 17,
1981 supporting the claim of the City of El Monte for reimbursement for
costs associated with Chapter 1143, Statutes of 1980.

very truly yours,

PATRICIA E. BERNARD
City Clerk

By *Arline Devine*
Arline Devine, Deputy City Clerk

enc.

cc: League of California Cities
State Board of Control
City of El Monte

Resolution NO. 9261 N.C.S. AUG 14 1981 T 6
of the City of Petaluma, California

SUPPORTING THE CLAIM OF THE CITY OF
EL MONTE FOR STATE-MANDATED COSTS
ASSOCIATED WITH CHAPTER 1143,
STATUTES OF 1980

WHEREAS, the City of El Monte has filed a claim for reimbursement from the State of California for costs incurred in complying with Chapter 1143, Statutes of 1980, dealing with specific requirements for the Housing Element of its General Plan;

WHEREAS, said legislation was passed after the effective date of Article XIII B of the California State Constitution, also known as Proposition 4, which required, among other things, that the State must provide a subvention of funds to reimburse local government for costs of any new program or any increased level of service caused by legislation or State agency action; and

WHEREAS, the City of Petaluma has, or shortly will, incur costs to comply with the Housing Element requirements of Chapter 1143, Statutes of 1980;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Petaluma declares its unanimous support for the claim of the City of El Monte for reimbursement for costs associated with Chapter 1143, Statutes of 1980.

THE WITHIN INSTRUMENT IS A
TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.

AUG 18 1981

ATTEST: _____
PATRICIA E. BERNARD
CITY CLERK, CITY OF PETALUMA
BY: Carline Deven
DEPUTY CITY CLERK

Under the power and authority conferred upon this Council by the Charter of said City.

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a (Regular) ~~(Ordinary)~~ meeting on the 17th day of August, 1981, by the following vote:

Approved as to
form

Matthew
City Attorney

AYES: COUNCILMEN PERRY/HARBERTSON/BOND/BATTAGLIA/VICE -MAYOR CAVANAGH/MAYOR MATTEI

NOES: NONE

ABSENT: COUNCILMAN BALSHAW

ATTEST:
Deputy

Carline Deven
City Clerk

F. H. Mattei
Mayor

SECTION II - B

DEPARTMENT OF FINANCE

SACRAMENTO

AH, "A-1"



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STATE BOARD OF CONTROL

Gary L. Longholm, Executive Secretary
State Board of Control

Board of Control Claim No. SB 90-3916, City of El Monte, for \$20,000, Housing
Elements of General Plans

Basis of Claim

This claim is based on increased expenditures alleged to have been incurred in meeting the requirements of Chapter 1143, Statutes of 1980 relating to the housing elements of general plans.

Summary of Recommendation

The Department of Finance finds that Chapter 1143 is not a State mandate because it simply codified existing requirements of the California Administrative Code.

Analysis

Chapter 1143, Statutes of 1980 (AB 2853, Roos) required the Department of Housing and Community Development (DHCD) to send each city and county a questionnaire requesting information on mobilehome sites and parks in the jurisdiction. It also codified a number of provisions of Title 25 of the California Administrative Code (CAC) regarding the housing element in local general plans. Chapter 1143 also provided that:

Jurisdiction with housing elements adopted before October 1, 1981, in conformity with the housing element guidelines adopted by the Department of Housing and Community Development on December 7, 1977, and located in Subchapter 3 (commencing with Section 6300) of Chapter 6 of Part 1 of Title 25 of the California Administrative Code, shall be deemed in compliance with this article as of its effective date. A locality with housing element found to be adequate by the department before October 1, 1981, shall be deemed in conformity with these guidelines.

(Through an error in drafting the above reference to Subchapter 3 should have been Subchapter 4; corrective legislation will be introduced to remedy this situation.)

Subchapter 4 of Title 25 was filed in 1977 pursuant to Section 41134 of the Health and Safety Code which further required that it conform to housing element guidelines initially adopted in 1971 and contains in Section 6400 the statement:

"These regulations are binding on all counties, cities and counties, and cities, including charter cities."

Section 6472 specifically requires that the housing element be reviewed and updated as appropriate no less than once every five years.

On this basis the Department of Finance finds that Chapter 1143, Statutes of 1980, is not a State-mandated local program because it simply codifies pre-existing requirements in Title 25 of the California Administrative Code.

If you have any questions regarding this recommendation, please contact James Apps of my staff at (916) 445-8913.

John P. Caffrey
Program Budget Manager

cc: Peter Schaafsma, Legislative Analyst Office
Carolyn Burton, Department of Housing and Community Development
Jay Stewart, Office of Planning and Research

0154F

Memorandum

Date :

To : Gary L. Longholm, Executive Secretary
State Board of Control

From : Department of Finance

Subject: Board of Control Claim No. SB 90-3759, County of Los Angeles, for \$50,000,
Housing Elements of General Plans

Basis of Claim

This claim is based on increased expenditures alleged to have been incurred in meeting the requirements of Chapter 1143, Statutes of 1980 relating to the housing elements of general plans.

Summary of Recommendation

The Department of Finance finds that Chapter 1143 is not a State mandate because it simply codified existing requirements of the California Administrative Code.

Analysis

Chapter 1143, Statutes of 1980 (AB 2853, Roos) required the Department of Housing and Community Development (DHCD) to send each city and county a questionnaire requesting information on mobilehome sites and parks in the jurisdiction. It also codified a number of provisions of Title 25 of the California Administrative Code (CAC) regarding the housing element in local general plans. The claimant alleges that Title 25 was merely advisory rather than mandatory so that the following specific requirements in Chapter 1143 were new State mandates:

1. Planning for meeting each city and county's appropriate share of the regional demand of housing as determined pursuant to a specified procedure by October 1, 1981.
2. Observing other specific time limits on compliance.
3. Revising the housing element every five years.

In response to our request for a breakdown of the costs attributable to the questionnaire on mobilehomes, a representative of the county of Los Angeles informed us on April 14, 1981, that none of their claimed costs were attributable to this element. Even if the county has incurred costs in this regard, we do not believe that they would be reimbursable since the counties were requested, not mandated to respond.

Sub: Claimant, CG, AC, CAC, Control
Dept. Housing & Comm. Dev.
mailed out 5/27/81 a.m.
A.H. A-3

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STATE BOARD OF CONTROL

With regard to meeting the October 1, 1981, date by adding Section 65586 to the Government Code, Chapter 1143 also provided that:

Jurisdiction with housing elements adopted before October 1, 1981, in conformity with the housing element guidelines adopted by the Department of Housing and Community Development on December 7, 1977, and located in Subchapter 3 (commencing with Section 6300) of Chapter 6 of Part 1 of Title 25 of the California Administrative Code, shall be deemed in compliance with this article as of its effective date. A locality with housing element found to be adequate by the department before October 1, 1981, shall be deemed in conformity with these guidelines.

(Through an error in drafting the above reference to Subchapter 3 should have been Subchapter 4; corrective legislation will be introduced to remedy this situation.)

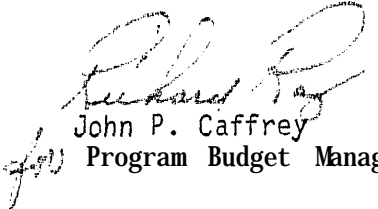
Los Angeles County's claim further contends that Chapter 1143 is a new mandate because the aforementioned CAC provisions were only advisory. Subchapter 4 of Title 25 was filed in 1977 pursuant to Section 41134 of the Health and Safety Code which further required that it conform to housing element guidelines initially adopted in 1971 and contains in Section 6400 the statement:

"These regulations are binding on all counties, cities and counties, and cities, including charter cities."

Section 6472 specifically requires that the housing element be reviewed and updated as appropriate no less than once every five years.

On this basis the Department of Finance finds that Chapter 1143, Statutes of 1980, is not a State-mandated local program because it simply codifies pre-existing requirements in Title 25 of the California Administrative Code.

If you have any questions regarding this recommendation, please contact James Apps of my staff at (916) 445-8913.



John P. Caffrey

Program Budget Manager

cc : Peter Schaafsma, Legislative Analyst Office
Carolyn Burton, Department of Housing and Community Development
Jay Stewart, Office of Planning and Research

0154F

Memorandum

Date :

To : Gary L. Longholm, Executive Secretary
State Board of Control

From : Department of Finance

Subject: Board of Control Claim No. SB 90-3760, City and County of San Francisco, for \$11,560, Housing Elements of General Plans

Basis of Claim

This claim is based on increased expenditures alleged to have been incurred in meeting the requirements of Chapter 1143, Statutes of 1980 relating to the housing elements of general plans.

Summary of Findings

The Department of Finance finds that Chapter 1143 is not a State mandate because it simply codified existing requirements of the California Administrative Code.

Analysis

Chapter 1143, Statutes of 1980 (AB 2853, Roos) required the Department of Housing and Community Development (DHCD) to send each city and county a questionnaire requesting information on mobilehome sites and parks in the jurisdiction. It also codified a number of provisions of Title 25 of the California Administrative Code (CAC) regarding the housing element in local general plans. The claimant alleges that Title 25 was merely advisory rather than mandatory so that the following specific requirements in Chapter 1143 were new State mandates:

1. Planning for meeting each city and county's appropriate share of the regional demand of housing as determined pursuant to a specified procedure by October 1, 1981.
2. Observing other specific time limits on compliance.
3. Revising the housing element every five years.

In response to our request for a breakdown of the costs attributable to the questionnaire on mobile homes, a representative of San Francisco informed us on April 15, 1981 that none of their claimed costs were attributable to this element. Even if San Francisco has incurred costs in this regard, we do not believe that they would be reimbursable since the counties were requested, not mandated to respond.

Fwd: Claimant, CSAC, LAO, Controller
Dept. Housing + Comm. Dev.

mailed out

5/27/81 a.m.

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STATE BOARD OF CONTROL

With regard to meeting the October 1, 1981, date by adding Section 65586 to the Government Code, Chapter 1143 also provided that:

Jurisdiction with housing elements adopted before October 1, 1981, in conformity with the housing element guidelines adopted by the Department of Housing and Community Development on December 7, 1977, and located in Subchapter 3 (commencing with Section 6300) of Chapter 6 of Part 1 of Title 25 of the California Administrative Code, shall be deemed in compliance with this article as of its effective date. A locality with housing element found to be adequate by the department before October 1, 1981, shall be deemed in conformity with these guidelines.

(Through an error in drafting the above reference to Subchapter 3 should have been Subchapter 4; corrective legislation will be introduced to remedy this situation.)

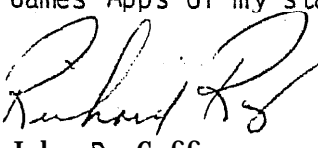
San Francisco's claim further contends that Chapter 1143 is a new mandate because the aforementioned CAC provisions were only advisory. Subchapter 4 of Title 25 was filed in 1977 pursuant to Section 41134 of the Health and Safety Code which further required that it conform to housing element guidelines initially adopted in 1971 and contains in Section 6400 the statement:

"These regulations are binding on all counties, cities and counties, and cities, including charter cities?

Section 6472 specifically requires that the housing element be reviewed and updated as appropriate no less than once every five years.

On this basis the Department of Finance finds that Chapter 1143, Statutes of 1980, is not a State-mandated local program because it simply codifies pre-existing requirements in Title 25 of the California Administrative Code.

If you have any questions regarding this recommendation, please contact James Apps or my staff at (916) 445-8913.


John P. Caffrey
Program Budget Manager

cc: Peter Schaafsma, Legislative Analyst Office
Carolyn Burton, Department of Housing and Community Development
Jay Stewart, Office of Planning and Research

0154F

MemorandumEl Monte AB-1

TO : State Board of Control
926 J Street, Suite 300
Sacramento, CA 95814

Date: August 6, 1981

Attention: Mr. Ray D. Banion
Assistant to the Executive
Secretary

From : Department of **Housing** and Community Development
Office of the Director

I. Donald Turner, Director

Subject: Prepared by Carolyn Burton, Deputy General Counsel

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STATE BOARD OF CONTROL

Subject: City of El Monte Claim No. SB 90-3916

DEPARTMENTAL RECOMMENDATION

The Department of Housing and Community Development recommends that the Board of Control deny the SB 90 claim of the City of El Monte under AB 2853 (Chapter 1143, Statutes of 1980) since this law does not mandate "a new program or an increased level of service of an existing program" pursuant to Section 2207 of the Revenue and Taxation Code.

El Monte's Claim

For over ten years the City of El Monte has failed to comply with the requirements of Government Code Section 65302(c) that it adopt a housing element that:

- (1) consists of "standards and plans for the improvement of housing and for the provision of adequate sites for housing";
- (2) makes "adequate provision for the housing needs of all economic segments of the community"; and
- (3) is "developed pursuant to regulations" adopted by the Department of Housing and Community Development (Government Code Section 65302(c)).

Had El Monte complied with this pre-SB 90 mandate, under the terms of AB 2853 its housing element would be "deemed in compliance" with AB 2853 as of its effective date. There would be no claim for reimbursement since the city would be in compliance with the law and no further costs would need to be incurred. In effect, El Monte is seeking reimbursement for its past failings to comply with laws which pre-date SB 90. This claim must certainly be rejected.

ARGUMENT

The Department's legal argument is contained in its July 14 recommendation regarding the claims of the County of Los Angeles and the City and County of San Francisco, beginning on page two, and incorporated herein. The argument is summarized as follows.

Summary

In 1980, the Legislature passed AB 2853 which continued in law the requirement of Government Code Section 65302(c) that local governments must adopt a Housing Element as part of its General Plan. AB 2853 removed from the law the 1971 requirement that local governments "provide for the housing needs of all economic segments of the community" and substituted for this obligation a requirement for a "maximum" effort, explicitly stating that the expenditure of local revenues is not required for housing development purposes. Thus, AB 2853 has substantially reduced state-mandated local costs required by compliance with state housing element law. On the basis of such "offsetting costs", Revenue and Taxation Code Section 2253.2(b)(5) requires that any SB 90 claims brought under AB 2853 be rejected.

AB 2853 has amplified the planning process required in the formulation of a housing element. The more detailed requirements merely make explicit what was implicitly required under the more general mandate of Section 65302(c) and, therefore, does not constitute a new program or an increased level of service of an existing program. Furthermore, the requirements of AB 2853 are derived from and reflect the existing mandatory requirements of state regulations, entitled "Housing Element Guidelines" (25 C. A. C. §6400 et seq.). These regulations adopted in 1977 did not require reimbursement under SB 90 since they made specific a general body of law which become operative prior to 1973.

The Department would also like to respond to several points raised by the attorney for the city in his memo dated July 13, 1981.

Bownds Decision

In its previous memoranda to the Board, the Department cited the case of Bownds v. Glendale (1980), 113 Cal.App.3d 845, hrg. denied, as holding that the Department's Housing Element Guidelines are advisory only. There has been no attempt to mislead the Board as alleged by El Monte's attorney. The Department has indicated that despite this decision, it continues to assert that the Housing Element Guidelines are mandatory regulations. It does so for the following reasons.

Analysis of Opinion

The Bownds decision is extremely poorly reasoned, totally lacking in legal analysis and support. (See Attorney General Brief in support of petition for hearing before the Supreme Court.) For example, it completely ignores the

fact that the housing element statute states that the local Housing Element is "to be developed pursuant to regulations". The 1971 amendment (SE3 1489), inserting this language in the Housing Element statute, was intended by its author, George Moscone, to establish state standards for housing element compliance. Following is an excerpt from a letter from Moscone to then Governor Reagan, urging him to sign SB 1489:

1970 legislation required the Commission of Housing and Development to evolve guidelines for the housing element of the general plan. SB 1489 requires that cities and counties, in developing the housing element of the general plan, follow these guidelines which were developed at the request of the Legislature, following public hearings throughout the state. (emphasis added)

That SB 1489 established binding requirements for housing element's was the view of the Legislative Counsel as well. The Legislative Counsel digest for SB 1489 reads as follows:

"Amends Sections 6530'2 and 65700, Government Code. Requires housing element of general plans to be developed pursuant to specified regulations and requires such elements to adhere to those standards." (Legislative Counsel's Digest, Sen. Bill No. 1489 April 16, 1971; emphasis added)

The Bownds decision is also completely wrong with regard to its analysis of AB 2853. It refers to Section 65585(a) cited below:

65585. (a) Each city, county, and city and county shall consider the guidelines adopted by the Department of Housing and Community Development pursuant to Section 50459 of the Health and Safety Code in preparation and amendment of the housing element pursuant to this article. Such guidelines shall be advisory to each local government in order to assist it in the preparation of its housing element. . . ,

With reference to this provision, the Bownds court states that "this indicates to us a recognition by the Legislature that the Department's Guidelines have always been advisory. . ." (supra, at 347). This is incorrect since this provision of AB 2853 has prospective application only.

It establishes that the 1977 Guidelines or any subsequent Guidelines adopted by the Department are advisory to local governments in the "preparation and amendments of the housing element pursuant to this article" (which takes effect October 1, 1981). Article 10.6, incorporating the basic requirements of the

Housing Element Guidelines into the statute, eliminates the need for binding regulatory requirements after October 1.

That the Bownds decision is incorrect in stating that AB 2853 is legislative recognition that the Housing Element Guidelines have always been advisory is also evidenced by the Legislature "grandfathering in" under the new law, housing elements that conform to the 1977 Guidelines.

Jurisdictions with housing elements adopted before October 1, 1981, in conformity with the Housing Element Guidelines adopted by the Department of Housing and Community Development on December 7, 1977. . shall be deemed in compliance with this article as of its effective date. A locality with a housing element found to be adequate by the Department before October 1, 1981, shall be deemed in conformity with these Guidelines,

If AB 2853 is, indeed, "recognition by the Legislature that the Department's Guidelines have always been advisory only", why did it deem to be in legal compliance only those housing elements developed in conformity with the Guidelines? If it perceived the 1977 Guidelines as merely advisory, it would have grandfathered in all previously adopted elements, irrespective of conformity with the Guidelines.

It is clear that the bill's author, Majority Leader Mike Roos, considered the Department's Housing Element Guidelines to be mandatory state requirements. In a letter to the Governor, urging him to sign AB 2853, he wrote:

"While the Administration and those of us in the Legislature concerned with increasing housing production have pushed local governments to accept their share of responsibility for solving the housing crisis, the record of local compliance with the housing element law and remissions has been extremely poor." (emphasis added)

Precedential Value

The attorney for El Monte notes that the Supreme Court denied a petition for hearing in Bownds and asserts, "In other words, the Supreme Court has decided. the issue and has decided that the Appellate Court decision in the Bownds matter is correct." That is patently untrue. "The Supreme Court has flatly rejected the notion that its discretionary denial of a hearing, for undisclosed reasons, could be interpreted as a positive approval and adoption of the point of law decided by the Court of Appeal." Witkin, California Procedure, 2nd Ed. (1971), Vol. 6, Pt. 1 at 4584. In the leading case, the Supreme Court stated that "the denial in any case. . . is not to be taken as an expression of any opinion by this court. . . nor, indeed, as an affirmative approval by this Court of the propositions of law laid down in such opinion." People v. Davis (7307) 147 c. 346, 350. See also Bohn v. Bohn (1913) 164 C. 532, 537 and

Di Genova v. State Board of Education (1962) 57 C.2d 167, 178. The failure of the Supreme Court to grant a hearing in Bownds is not, contrary to El Monte's assertion, a statement that Bownds is correct law.

Court of Appeal's decisions are not binding upon other District Courts of Appeals. Witkin, supra. Rulings of Courts of Appeals are binding on lower courts unless there are conflicting appellate decisions. At least one other Court of Appeals in California, the Fourth District, has indicated that the Department's Housing Element Guidelines are mandatory state requirements. In the case of Stocks v. Irvine (1981) 114 Cal.App.3d 520, the Court referred to the housing element statute (Government Code Section 65302(c) and stated:

That this mandate imposes upon cities and counties a responsibility to provide a fair share of the regional housing that has been recognized in the regulations implementing the statute. Id. at 732.

And later, in reference to the requirement of the Guidelines that cities and counties have fair share responsibilities, the Court referred to the "legislative mandate that cities and counties are to be responsive to the housing needs of persons who are not part of their resident population" (Id. at 347) This "legislative mandate" regarding fair share responsibilities derives from the Department's regulations which, in interpreting the statute, have the force of law.

Finally, El Monte's quotes from certain legal digest services, The Real Property Law Reporter and the Land Use Litigation Newsletter, regarding the Bownds decision are totally irrelevant. While generally we concur with these descriptions of what the Court did in Bownds, they are merely case summaries and nothing more. Such summaries indicate nothing about the precedential value or judicial weight of the Bownds opinion.

To summarize the Department's position: In the face of the conflicting appellate views on the nature of the Guidelines and continuing litigation on this issue, the Department asserts in good faith that until October 1, 1981 the 1977 Housing Element Guidelines are mandatory state regulations and urges the Board to so view them.

CB:d1c

Memorandum

Filed to CSAC, League of Cal.
Cities, S Co. H.B. 111, San Mateo,
Business and Transportation Agency
Trans 12, 113

To : Mr. Ray D. Banion
Assistant to the
Executive Secretary
State Board of Control
926 J Street, Suite 300
Sacramento, CA 95814

Date: July 14, 1981
Telephone: ATSS () 13-2

From : Department of Housing and Community Development
Carolyn Burton, Deputy General Counsel

Subject: County of Los Angeles Claim No. SB 90-3760
City and County of San Francisco No. SB 90-3760

The department has revised its recommendation regarding SB 90 claims submitted by the County of Los Angeles and the City and County of San Francisco. Please disregard our earlier recommendation dated May 14, 1981 and forward this recommendation in its place to the members of the Board of Control.

cc: Counsel, County of Los Angeles
Counsel, City and County of San Francisco
Counsel, City of El Monte
DoF
LAD
William Ross, Esquire

Memorandum

To : State Board of Control
926 J Street, Suite 300
Sacramento, CA 95814

Date: July 14, 1981

Telephone: ATSS ()
()

Attention Mr. Ray D. Banion
Assistant to the
Executive Secretary

From : Department of Housing and **Community Development**
I. Donald Turner, Director
Prepared by Carolyn Burton, Deputy General Counsel

Subject:

County of Los Angeles Claim No. SB 90-3760
City and County of San Francisco No. SB 90-3760

DEPARTMENTAL RECOMMENDATION

The County of Los Angeles and the City and County of San Francisco do not have SB 90 claims under Chapter 1143, Statutes of 1980 (AB 2853) since compliance with the law will not result in their incurring any costs. Therefore, the claims should be denied by the Board of Control.

The County of Los Angeles

The County of Los Angeles asserts in their claim that "to meet the October 1, 1981 deadline, it will be necessary to commence efforts for compliance immediately, thus causing increased costs." It is clear from the statute that Los Angeles County already complies with AB 2853 and, thus, has no claim for costs mandated by AB 2853. The statute "grandfathers in" housing elements adopted in compliance with the 1977 Guidelines.

65586. Local governments shall conform their housing elements to the provision of this article on or before October 1, 1981. Jurisdictions with housing elements adopted before October 1, 1981, in conformity with the housing element guidelines adopted by the Department of Housing and Community Development on December 7, 1977...shall be deemed in compliance with this article as of its effective date. A locality with a housing element found to be adequate by the department before October 1, 1981, shall be deemed in conformity with these guidelines.

Los Angeles County adopted a Housing Element on November 24, 1980 pursuant to the Housing Element Guidelines. The department reviewed the County's Housing Element and by letter dated February 13, 1981 (Attachment I) certified that the element meets the requirements of the Housing Element Guidelines. Therefore, Los Angeles need take no further action or incur any costs since it is already in compliance with AB 2853. The County's Housing Element was prepared pursuant to Government Code § 65302(c) and

the Housing Element Guidelines; any costs associated with the preparation of the Housing Element were not mandated by AB 2853.

Los Angeles County makes specific reference to costs associated with making the General Plan internally consistent. This requirement of internal consistency is not mandated by AB 2853; it is found at Government Code § 65300.5 and has been in effect since 1975.

The City and County of San Francisco Claim

The City and County of San Francisco adopted a Housing Element in December 1980 pursuant to Government Code Section 65302(c) and the Housing Element Guidelines. The department reviewed this element on May 28, 1981, and indicated that with minor revisions the housing element would meet the requirements of the Housing Element Guidelines (Attachment 2). These revisions can be accomplished, incurring no new costs; and if accomplished prior to October 1, 1981, San Francisco will be in compliance with AB 2853 before its operative date. Thus, San Francisco has no claim for costs under AB 2853.

San Francisco also claims costs will be incurred as a result of making the General Plan internally consistent. As noted above, this requirement is not mandated by AB 2853.

These two claims should be rejected as being completely without merit, there being no need to reach the substantive issue of whether AB 2853 mandates new costs on local governments. However, the Board may wish to decide this issue in anticipation of future claims. Therefore, the Department of Housing and Community Development offers its position that AB 2853 (Ch. 1143, Stats. of 1980) does not mandate "a new program or an increased level of service of an existing program" pursuant to Section 2207 of the Revenue and Tax Code.

ARGUMENT

Summary

In 1980, the Legislature passed AB 2853 which continued in law the requirement of Government Code Section 65302(c) that local governments must adopt a Housing Element as part of its General Plan. AB 2853 removed from the law the 1971 requirement that local governments "provide for the housing needs of all economic segments of the community" and substituted for this obligation a requirement for a "maximum" effort, explicitly stating that the expenditure of local revenues is not required for housing development purposes. Thus, AB 2853 has substantially reduced state-mandated local costs required by compliance with state housing element law. On the basis of such "offsetting costs," Revenue and Tax Code Section 2253.2 (b) (5) requires that any SB 90 claims brought under AB 2853 be rejected.

AB 2853 has amplified the planning process required in the formulation of a housing element. The more detailed requirements merely make explicit what was implicitly required under the more general mandate of Section 65302(c)

and, therefore, does not constitute a new program or an increased level of service of an existing program. Furthermore, the requirements of AB 2853 are derived from and reflect the existing mandatory requirements of state regulations, entitled "Housing Element Guidelines" (25 C.A.C. § 6400 et. seq.). These regulations adopted in 1977 did not require reimbursement under § 90 since they made specific a general body of law which became operative prior to 1973.

Background: Housing Element Requirements Prior to AB 2853

Government Code Section 65300 requires all cities and counties to prepare and adopt "a comprehensive long-term plan for the physical development of the city or county" consisting of nine mandatory elements. In 1967, the Legislature established the housing element as one of the mandatory elements (Gov. Code § 65302(c)). In 1971, the Government Code was amended to declare that each city and county must include a housing element as apart of its general plan which:

1. Is "to be developed pursuant to regulations" to be adopted by the Department of Housing and Community Development;
2. Consists of "standards and plans for the improvement of housing and for the provision of adequate sites for housing;"
3. Makes "adequate provision for the housing needs of all economic segments of the community." (Gov. Code § 65302(c))

Unlike the statutes governing the other General Plan elements, the housing element statute places significant program implementation responsibilities upon local government. First and foremost, in order to "provide for the housing needs of all segments of the community," the element must comprehensively analyze the existing housing supply. Without such a data base in the housing element, the local government cannot identify and adopt programs, or make decisions designed to address housing deficiencies in the community. A housing element that does not accurately reflect the conditions of the housing market prevents the jurisdiction from complying with the mandate under Section 65302.

Section 65302(c) also requires that once a completed inventory of the housing situation and an analysis of housing is prepared, the element must adopt an affirmative program to "make adequate provision for the housing needs of all economic segments." The significance of this duty was underscored by the strengthening of Section 65302(c) in 1971. In that year, the limiting words "endeavor to" were deleted before the requirement that the housing element "make adequate provision for the housing needs of all economic segments of the community." (Stats. 1971, Ch. 1803 § 1) With the passage of this amendment, the Legislature signaled its commitment to a housing element process centered on the development and implementation of a housing "action" program that is designed to satisfy the housing needs of all economic segments of the community.

The California Legislature in subsequent years continued to give special attention to the severe housing problems facing the state. The Zenovich-Moscone-Chacon Housing Act of 1977 called attention to the "serious shortage of decent, safe and sanitary housing which persons and families of low or moderate income . . . can afford" and declared that the early attainment of the national goal of a decent home and a suitable living environment for all citizens was "a priority of the highest order" in California. (Health and Safety Code § 50002)

Problems of Local Compliance

Despite the strong concern demonstrated by the Legislature that the state's housing needs be met, the record of local government compliance with statutory housing element requirements throughout the seventies was exceedingly poor. A study prepared at the request of the League of Cities in 1975 concluded that although "housing needs planning, among other planning requirements, has received special emphasis in the law, . . . local governments in California have a spotty record in responding to the Legal requirements concerning housing." ^{1/} Indeed, records of the State Department of Housing and Community Development indicate that at the end of 1979 more than a decade after the requirement that local government adopt a housing element was in effect, only 60 out of 480 California cities and counties had adopted an element; furthermore, the department determined that only about 10% of these adopted elements were in compliance with state law.

It was largely in response to this failure by local governments to comply with statutory housing element requirements that the Legislature enacted AB 2853 (Attachment 3). The bill's author, Assemblyman Mike Roos, wrote the following in a letter to the Governor urging him to sign AB 2853:

While the Administration and those of us in the Legislature concerned with increasing housing production have pushed local governments to accept their share of responsibility for solving the housing crisis, the record of local compliance with the housing element law and regulations has been extremely poor. The battle over the nature of HCD's regulations and the vague wording of the present statute has clouded efforts at compliance, has led to increasing litigation, and has not resulted in the needed housing production which we all desire."

I. AB 2853 Imposes a Lesser Mandate on Local Government Than Government Code Section 65302(c)

As noted above, since 1971, Government Code Section 65302(c) has required that the housing element "make adequate provision of the housing needs of

^{1/} Local Government's Role in Housing, prepared by the Institute for Local Self Government, September 1975, p. 68.

all economic segments of the community." The reasonable interpretation of this requirement is that cities and counties are required to actually provide housing for all low and moderate income households in need of housing. Obviously, such a mandate would impose significant costs on local government, involving the expenditure of high levels of local funds since available federal and state subsidies can only satisfy a small portion of the state's housing needs.

AB 2853 dramatically reduces local government's obligation to solve housing needs. Language negotiated and drafted jointly by the League of Cities and the Department recognized that the "adequate provision" requirement of Section 65302 had placed an impossible burden on local government: housing needs are too vast and local government's resources are too limited to realistically expect that local government can provide for all of the housing needs within the community. The following amendment to AB 2853 meets this problem head-on:

65583(b). It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the identified existing housing needs, but should establish the maximum number of housing units that can be constructed, rehabilitated, and conserved over a five-year time frame. (emphasis added)

Thus, the requirement of Section 65302(c) that total housing needs be satisfied is replaced with the more realistic goal that the housing element should provide for the "maximum" number of housing units that can be accomplished within a specific time frame.

Further, AB 2853 explicitly states that the local revenues for housing development purposes are not required to meet even this more limited goal:

65589(a). Nothing in this article shall require a city, county, or city or county, to . . . (1) Expend local revenues for construction of housing, housing subsidies, or land acquisition.

This is a dramatic reduction from the mandate of Section 65302(c) whereby cities and counties are required to provide for the housing needs of all economic segments of the community.

At the same time that local costs associated with housing element compliance have been radically decreased by AB 2853, the new law spells out in more depth the planning process mandated by Section 65302(c). This explicit detailing of a planning process that was previously mandated in more general times does not constitute "a new program or an increased level of service of an existing program." As noted above, in order to "provide for the housing needs of all economic segments of the community" under the

existing law, a comprehensive analysis of housing needs must first be accomplished. AB 2853 makes this requirement explicit in calling for "an identification and analysis of existing and projected housing needs" (§ 65583). The requirement of "standards and plans for the improvement of housing and for the provision of adequate sites for housing" and the "adequate provision" requirement of Section 65302(c) are further amplified in the program section of AB 2853.

In summary, although more detail with respect to the planning process is prescribed by AB 2853, the new law results in dramatic offsetting savings to local government. Section 2253.2 (b) (5) of the Revenue and Taxation Code requires that the Board not find a reimbursable mandate.

II. AB 2853 Places in Statute the Requirements of the Housing Element Guidelines

As noted above, the Housing Element of the General Plan was enacted in 1967. In 1970, a requirement was added to the Health and Safety Code directing the Department of Housing and Community Development to develop "guidelines" for the preparation of local housing elements. ^{2/} After extensive public input, Housing Element Guidelines were first adopted by the department in 1971. Subsequent to the adoption of these Guidelines, but prior to the enactment of SB 90, the Government Code was amended to require that the housing element "be developed pursuant to regulations" adopted by the department pursuant to the Health and Safety Code. The statute was also strengthened by deleting the phrase "endeavor to" before the requirement that the housing element "make adequate provision for the housing needs of all economic segments of the community."

In 1977, the Housing Element Guidelines were revised pursuant to the amended statute. These regulations, adopted in accordance with the Administrative Procedure Act as required by the Health and Safety Code, impose mandatory requirements on local governments with respect to housing element contents. (25 C.A.C. § 6400 et. seq.; Attachment 4) ^{3/}

The 1977 Housing Element Guidelines call for local government to include in its housing elements an analysis of housing needs, a statement of goals and housing objectives, and a description of the housing program it intends to undertake in order to comply with the statutory mandate to "make adequate provision for the housing needs of all economic segments of the community." The Guidelines set forth a schedule for cities and counties to adopt housing elements in compliance with the Guidelines during 1979-80 and call for revisions not less than every five years.

^{2/} Health and Safety Code Section 37041, renumbered Section 41134 by AB LX, Ch. 1 of 1977, which required the guidelines to be adopted "in accordance with the Administrative Procedure Act" and authorized the department to review local housing elements "for conformity with the requirements of Section 65302(c) of the Government Code and guidelines adopted pursuant thereto." Section 41134 was more recently renumbered Section 50459 by SB 1123, Ch. 610 of 1977, without change.

These revised regulations were developed in order to reflect more accurately and effectively implement the program set forth in Government Code Section 65302(c), as amended. These Guidelines make specific the general body of housing element law which became operative prior to 1973 without either adding to or expanding the statutory requirements contained therein. Since the regulations neither create new programs nor expand the level of programs mandated as of January 1, 1973, they do not create costs eligible for reimbursement under Section 2231. ^{3/} This conclusion is in accord with Management Memo No. 76-4 in which the Department of Finance determined that "if a mandate is contained in a statute enacted prior to January 1, 1973 and a subsequent executive regulation is issued (after January 1, 1973) to implement, interpret, or make specific the statute without increasing pre-1973 program levels, such executive order is not eligible for reimbursement." The Department of Finance goes on to note that local costs are reimbursable under SB 90 only if they are made necessary by "executive orders which mandate a new program, increased level of service, or increased program level which go beyond the requirements of an existing mandate."

AB 2853 placed in the Government Code the basic requirements of the 1977 revised Housing Element Guidelines. Consistent with the existing requirements of the regulations, AB 2853 requires that a local housing element consist of "an identification and analysis of existing projected housing needs, and a statement of goals, policies, quantified objectives, and scheduled programs for preservation, improve-rent, and development of housing." (Government Code Section 65583) The more specific requirements of AB 2853 also parallel existing requirements in the Housing Element Guidelines.

Each city and county must adopt a housing element by October 1, 1981 that conforms to the requirements of AB 2853. However, jurisdictions which have adopted housing elements in conformity with the Housing Element Guidelines by October 1, 1981 are "deemed in compliance" with the requirements of AB 2853. Thus, AB 2853 continues in law the requirements of the Housing Element Guidelines and implicitly acknowledges that the Guidelines were binding. At the same time, the new law establishes that subsequent guidelines adopted by the department for preparation of housing elements pursuant to the amendments of AB 2853 will be advisory to local governments (Govt. Code Sec. 65585(a)).

AB 2853 continues in law an existing program required by Government Code Section 65302(c) and the regulations adopted pursuant to it. Therefore, it does not mandate a new program or an increased level of service of an existing program pursuant to Section 2207 of the Revenue and Tax Code.

3/ This is the legal opinion of the department and the Office of the Attorney General. (Attorney General's briefs have been submitted to Board of Control staff for informational purposes.) Recently, the Court of Appeals, Second District, ruled that the Housing Element Guidelines are advisory only. (Bownds v. City of Glendale (1980), 113 Cal.App.3d 875, hrg. denied) However, absent a decision of the Supreme Court affirming this view and in the face of continuing litigation on this issue, the department continues to assert that the Housing Element Guidelines are mandatory regulations.

4/ See HCD's determination that the Guidelines do not require reimbursement under SB 90, Attachment 5.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Research and Policy Development Division

921 Tenth Street

-Sacramento, CA. 95814

(916) 445-4725



February 13, 1981

Mr. Harry Hufford
County Executive
County of Los Angeles
Hall of Administration
500 W. Temple St.
Los Angeles, CA 90012

Dear Mr. Hufford:

Review of the County of Los Angeles' Adopted Housing Element

The Department of Housing and Community Development has reviewed the adopted housing element of November 24, 1980, for the County of Los Angeles. Under Section 50459 of the State Health and Safety Code, our Department is authorized to review local housing elements "for conformity with the requirements of Section 65302(c) of the Government Code and guidelines adopted pursuant thereto." In order to conform to these requirements, the housing element must contain, "standards and plans for the improvement of housing and for the provision of adequate sites for housing" and is to make "adequate provision for the housing needs of all economic segments of the community."

The Guidelines define adequate provision to be "a good faith, diligent effort" to expand housing opportunities. They further provide that such effort is to emphasize use of local public powers which impact upon housing including a commitment to pursue and cooperate in available Federal and State programs.

We understand that the adopted housing element for the County of Los Angeles is comprised of the following documents: a) Chapter IV of the County General Plan; b) Technical Supplement C-I; and c) Housing Element Addenda 1-6 of January 30, 1981.

There are three steps in our review of housing elements. First, we look at the identification of existing housing needs in terms of affordability, overcrowding, rehabilitation, replacement and also special and prospective

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needs; secondly, we examine these needs in the context of local governmental and market constraints. Next, we review housing implementation programs to see if they address what have been defined as areas of greatest need and evidence commitments by the locality to carry out the programs that have been selected.

To summarize our findings, the County has produced a housing element which adequately identifies the unincorporated County's housing needs and constraints. The document also firmly commits the County to an aggressive program to mitigate a significant portion of the identified need during the time frame of the housing element. For these reasons, we are pleased to report that, in our opinion, the Los Angeles County Housing Element conforms to Government Code Section 65302(c) and the 1977 Housing Element Guidelines.

I. HOUSING NEEDS IDENTIFICATION AND DOCUMENTATION

The County has provided in the housing element a needs identification section which is well written and documented. All essential information needed to document the County's affordability, rehabilitation, replacement and new construction need as well as the market and governmental constraints affecting housing production and conservation are included in the element.

II. HOUSING PROGRAM

The Los Angeles County Housing Element contains housing programs which, when implemented, will represent a "good faith, diligent effort" to preserve, improve and develop its housing stock in a manner consistent with the identified need, including its fair share responsibility as defined by the Southern California Association of Governments (SCAG). The programs generally relate to the identified needs and constraints and when implemented will provide good mechanisms for attaining the goals and objectives contained in the County Housing Element.

Data contained in the County's Housing Element indicate that 82,200 households requiring housing assistance will reside in the unincorporated County in 1985. This need is further illustrated by household type: a) 36,600 (44.5%) small family and other single households; 27,600 (33.6%) elderly households; 11,600 (14.1%) large family households, and 6,400 (7.8%) handicapped households. In addition to these 82,200 households, 28,000 units (6,000 owner and 22,000 renter) require rehabilitation and 11,000 units (3,000 owner and 8,000 renter) require replacement.

The element states that there will be approximately 23,000 new constructed units within the unincorporated County between 1980-85. The County is to be commended for proposing that of these 23,000 housing units, approximately 11,700 rental

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units and 750 owner units for low and moderate income households will be constructed utilizing federal and state programs as well as through the use of public powers. The rental units will be provided using the following federal programs: Section 8 new construction, 7,000 units; low rent public housing, 800 units; Section 202, 500 units. The use of local public powers will involve using tax-exempt revenue bonds to construct 2,000 rental units and tax increment financing will enable the construction of 400 rental units. An additional 1,000 rental units will be provided through a combination of County land banking and private funds. 750 new owner units for low and moderate income homeowners will also be provided utilizing federal (Section 265/235, 50 units), state (CHFA, 100 units), and local (tax-exempt revenue bonds, 500 units; tax increment financing, 100 units) programs. The County's commitment to utilize these programs indicates that between 1980-85 approximately 54% of all newly constructed units (excluding replacement units) in the unincorporated County will be affordable to households earning 80% or less (adjusted for household size) of the SMSA median income.

As you know, a basic ingredient for the provision of lower income housing in high land cost areas, is the availability of land zoned at a high enough density for a project to be economically feasible to construct. We note in Table 2 of Addendum 2 that 14,000 or 61% of the 23,000 units projected to be constructed between 1980-85, will be built in the "urban expansion" area. Table 6, in the same Addendum, displays the land supply in the "urban expansion" area and shows that the majority (86.6%) of this land is designated low density (1-6 units per acre). While we understand that approximately 3,600 acres of land are available in the "infill" and "revitalization" areas, and that a minimum of 1,300 acres in these two categories are designated medium and high density (12+ units per acre), only 30% of all newly constructed units between 1980-85 are slated to be placed in these areas (Table 2).

The density bonus program (Program 32) could provide an assurance of proper densities for prospective developers of lower income housing. As indicated in the housing element, as well as through conversations with Regional Planning staff, we understand that the density bonus program and its implementing ordinance were drafted and submitted to the Regional Planning Commission for discussion in February of 1980. Since that time, staff has prepared amendments to the proposal which will encourage a minimum of 15% low and moderate income housing within a project by granting up to a 50% density bonus over the base zone or General Plan residential land use category. Another provision of the program includes an anti-speculation assurance which will require that the developer retain a specific number of affordable units for at least 20 years.

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The housing element indicates that the Board of Supervisors is expected to adopt Program 32 and its implementing ordinance in the first half of 1981. We urge the County to implement this program as quickly as possible and to approve eligible developments at the top end of the low density category. If such projects are approved an additional density bonus of up to 50% would help assure that the County meet its aggressive program for the production of 12,350 owner and renter housing units affordable to low and moderate income households between 1980-85.

III. OTHER MATTERS


1. Since a portion of Los Angeles County is located within the Coastal Zone, that area is subject to the provisions of Section 30213 of the Coastal Act. Since the requirements of the Act differ from those for housing elements (Health and Safety Code Section 65302(c) and the Housing Element Guidelines) the adoption of a housing element pursuant to Section 65302(c) may not assure compliance with the housing provisions of the Coastal Act. It may be necessary to make adjustments or develop strategies to meet the coastal mandate to "protect, encourage and, where feasible, provide" housing opportunities for families of low and moderate income.
2. While reviewing the adopted document, we noted that a footnote on page IV-7 discussing "undocumented aliens" was inadvertently removed. We understand that it will be included in subsequent printings of the housing element.
3. Through conversations with Regional Planning staff, we understand that the three documents comprising the housing element are being printed as a single document. In addition, County Regional Planning staff will be providing references in Chapter IV of the County General Plan which will assist the reader in obtaining more specific information regarding the unincorporated county housing need, constraints and programs which are contained in Addendum 1-6.

In summary, we would like to commend the County of Los Angeles for producing a housing element which adequately identifies housing needs and contains housing programs with quantified objectives which constitute a "good faith, diligent effort" in mitigating those identified needs. In addition, we would like to thank Lee Stark, Ted Howard and Norman Murdock for their cooperation and assistance during the review of this document.

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Should you or your staff have any questions, or if we could assist the County during the implementation phase of the element, please contact Mary Ann Karrer at (916) 323-6165.

Sincerely,


David Williamson
Supervisor, Review Section

cc: Norman Murdock, Regional Planning Department
Ted Howard, Regional Planning Department
Lee Stark, Regional Planning Department
Mark Pisano, Executive Director, SCAG
Carlyle Hall, Center for Law in the Public Interest*
Peter Detwiler, OPR
Jay Stewart, OPR

*CLPI has a standing request on file with HCD to receive a copy of all office correspondence relating to housing element reviews for jurisdictions in Los Angeles County. We are forwarding a copy of this letter to them in accordance with the Public Information Act.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

DIVISION OF RESEARCH AND POLICY DEVELOPMENT
921 Tenth Street
Sacramento, CA 95814



May 28, 1981

Mr. Roger Boas
Chief Administrative Officer
City and County of San Francisco
100 Larkin
San Francisco, CA 94102 .

Dear Mr. Boas:

RE: Review of San Francisco's Adopted Housing Element

The Department of Housing and Community Development has reviewed the City and County of San Francisco's Housing Element adopted December 1980. Under Section 50459 of the State Health and Safety Code, our Department is authorized to review local housing elements "for conformity with the requirements of Section 65302(c) of the Government Code and Guidelines adopted pursuant thereto." The purpose of our review is to advise the City and County of any additional steps which might need to be taken to produce a housing element which is in conformity with the 1977 Guidelines.

As set forth in the Housing Element Guidelines, the two most important components of the housing element are:

- 1) the identification and documentation of housing need; and,
- 2) the development of a housing program to address these identified needs.

The Guidelines define adequate provision to be "a good faith, diligent effort" to expand housing opportunities. They further provide that such effort is to emphasize use of a wide range of local public powers which impact upon housing including a commitment to pursue and cooperate in available Federal and State programs. We have noted several areas which need further development for the San Francisco City and County Housing Element to conform to state housing element law.

I. HOUSING NEEDS AND IDENTIFICATION AND DOCUMENTATION

Part 1 of the Housing Element contains useful and relevant information regarding households and housing units in San Francisco. However, there are discrepancies in some of the data. Specifically, the household median income data is not clear. There are no dates or sources shown for median income data on pages 2, 4 and 5. We recommend that the 1975 San Francisco-Oakland SMSA median income data be used in order to define household needs. This is the most recent data available. In addition, the data on page 2

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projects that, in 1985, 95% of the City's households will be low/moderate income. This would be a major change from 1970 when 47.1% of households were low/moderate income. We suggest the City reconsider whether the straight-line projection method used for these calculations is a realistic procedure for estimating future low/moderate income households.

In addition, there appears to be some discrepancies evident in the data on vacancy rates. As noted on page 13, the 1980 vacancy rate for renter-occupied units is 8.3%, recent newspaper articles have quoted city staff members as stating that the vacancy rates for apartments is less than 3%. Because renters are identified in HAP as having the most significant housing needs in San Francisco, the discrepancy in renter vacancy rates should be clarified.

Jobs and Housing

On page 13 of the "Needs" section (Part 1), it is indicated that there will be an increase of approximately 41,447 new jobs in San Francisco by 1985. Because of the inter-relationship between jobs and housing, we maintain that the creation of new job opportunities should be accompanied by the provision of a sufficient proportion of new housing opportunities, for these employees.. The jobs/housing balance seems to be an especially important issue in San Francisco because the City is a regional employment center.

We are pleased to note that the Planning Commission of the City of San Francisco has approved a policy expressing the City's intention to add 20,000 additional units to the housing stock by 1985. In developing strategies and programs to meet that goal, we encourage the City to undertake programs that will create housing opportunities for a significant portion of persons that will occupy those jobs.

The issue of jobs and housing is evident in other areas of the state. Presently under consideration in four Placer County jurisdictions is a system by which housing development, both market-rate and assisted, would be developed in a timely relationship to the creation of jobs. A consultant has been hired to assist in a study, presently on-going, to plan for the development of such a program which will facilitate the production of such housing.

The consultant may also be asked to develop a methodology for possible application Statewide which would demonstrate how to link the type of development which is occurring (including type of jobs wage rates, and relationship to existing transportation and commuting patterns) to the housing needs. Among specific factors being examined are: (1) translating wages paid to the workers in the basic jobs into income available for affordable housing for all the employees connected to the jobs (including secondary jobs); (2) determining a reasonable commute radius which will not significantly deteriorate air quality; (3) establishing the actual mechanism

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(zoning or other ordinance, use permits, development agreements) which can be used to assure that the future housing and economic development will go forward, hand in hand, without creating a strain on the existing supplies of affordable housing, and without causing insurmountable infrastructure financing problems for the local governments involved, and without passing all costs of new development on to the future low and moderate income housing supply. Of paramount concern, of course, in the development of the local housing elements is the determination of the most effective way to utilize limited public subsidies for assisted housing development, which maximizes the use of local powers to reduce building and infrastructure costs and permit processing time.

Currently, all of the above issues and others are still under discussion. However, one of the consultants's findings which has applications for San Francisco has been that, given a choice of housing opportunities in terms of commuting requirements and costs of housing units, as many as 90% of households will choose to live near their place of employment. From this premise comes a host of issues that San Francisco needs to address related to how local governments looking forward to significant amounts of economic development can seek to provide affordable housing opportunities for the greatest possible proportion of the future workers. Plans and programs to provide such housing must also be consistent with other measures to encourage the use of transit and other transportation systems, air quality preservation, energy conservation and also maximize the existing and planned expenditures for infrastructure needs.

One strategy that San Francisco may wish to consider in addressing this issue is to tie the rate of job production to the creation of housing units. The recently adopted policy to require that high rise commercial/residential developers provide housing for their new employees would seem to effectively mitigate the effect of these new jobs on the San Francisco Bay Area housing market.

II. HOUSING PROGRAMS

While an accurate assessment of housing need is essential, the heart of the housing element lies in those provisions relating to the development and implementation of a housing program. To achieve this, Section 6450 of the Guidelines calls for a program containing five explicit commitments as follows:

1. the specific objectives to be accomplished (quantified when possible);
2. the actions which will be undertaken to implement the program (for example, city council resolution, land acquisition, density bonus, etc.);

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3. the sources of financing or funding (e.g., federal or state programs, local revenue bonds, private subsidy, etc.);
4. the local agencies with primary responsibility for implementing programs; and,
5. the establishment of reasonable time frames for accomplishment of specific objectives, which include benchmarks to indicate progress.

San Francisco's housing program section identifies over 40 existing and proposed programs to address housing need. This multi-faceted approach to solving the housing needs in San Francisco is commendable; however, quantified objectives are not shown beyond the end of calendar year 1981 for most of the programs. This time frame means that even if the City revises the element according to the comments in this letter and the Department finds that the housing element conforms to state housing element law, it will be necessary to update the element by the end of this calendar year.

For your information, we point out that the next update after December 31, 1981 should conform to the recently enacted provisions in Article 10.6, commencing with Section 65580 of the Government Code (AB 2853).

Although San Francisco has a broad array of housing programs, quantified objectives are not shown for several of the more significant programs. It also appears that there are several programs that are being implemented but are not mentioned. In specific, programs that are existing but no quantified objectives are shown include the following:

- a) Preservation Loan Program (page 7)
- b) Downpayment Assistance Loan Program (page 20)
- c) Condominium Conversion Ordinance (page 20-21)

The quantified objectives resulting from condominium conversion should include estimates of the number of units that will result for lower income and other below market rate households and should also include estimates of the number of tenants displaced due to conversion and the method for relocating those tenants. Renter households have been identified in this element as having the most severe housing needs, thus, the effect of condominium conversions on renter households should be closely examined. In addition to the above, discussions with staff indicates that there are also several proposed programs that should be included in the Element. For example:

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- a) Projected issuance of \$100 million dollars in mortgage revenue bonds for moderate income households (summer '81)
- b) Inclusionary Housing Program
- c) State of California Rental Construction Funds
- d) Provision of funds by Ramada Inn, Holiday Inn, and Hilton Inn (tentatively) for housing in the Tenderloin area (estimated funds generated are \$12 million over 20 year period)
- e) Approved UDAG which contains provisions for 468 single-room affordable units for 15 years (in co-ordination with Goldrich, Kest and Stern Company)
- f) Residential Hotel Conversion Ordinance (Although mentioned in the adopted Element as a study, this ordinance has since been adopted)
- g) Use of Housing Development Corporations in preserving affordable housing units on a long-term basis (e.g., in Wharf Plaza project, an HDC is a limited partner for a 233 unit assisted housing development)
- h) Demolition ordinance (proposed) and the type of relocation assistance proposed.
- i) Requirement for developers of new office buildings to provide resources for the housing of new employees.

We understand that at this time there is a study underway to determine the feasibility of establishing a "housing production" unit in the City Planning Department to expedite processing time for housing developments with affordable units. We encourage the use of priority processing such as this whenever feasible in order to reduce overall housing costs.

Fair Share and Program Objectives

The Housing Element Guidelines (Section 6460) requires that each locality make a good faith, diligent effort to provide opportunities for and to Facilitate the maintenance, improvement and development of an appropriate variety of housing for all economic segments of the community consistent with its fair share responsibilities.

In our assessment of the City's level of effort towards addressing identified needs, we note that the most critical need is affordability. Approximately 27 percent of San Francisco's households are low and very low income residents who are experiencing affordability problems. Although objectives are quantified for several rehabilitation programs, we are unable

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to determine whether the total program effort will result in the provision of an adequate level of assistance to households experiencing affordability problems. For example, the housing element contains a policy which proposes to encourage multiple residential development in conjunction with commercial uses in the downtown commercial area. There are no quantified objectives for the number of affordable housing units or lower income households to be assisted as a result of this and other programs. Thus, quantified objectives for the program section should be separated into the categories of affordability and rehabilitation/replacement and should demonstrate a level of effort in proportion to needs. Also, quantified objectives for a majority of the programs are given for a period covering 1980 and 1981. Supposedly a portion of the objectives have been met for 1980. Therefore, in revising the quantified objectives the City should subtract households who had their needs met in 1980.

OTHER TOPICS

In addition to the above, there are several issues that must be addressed in the Housing Element but are not at this time.

1. Citizen Participation

A description of the type and amount of citizen participation during the preparation of the Element must be included in the document. It is our understanding that there was considerable citizen participation during the preparation of part II ("Goals and Policies") of the Element. However, it is not clear whether this same procedure was followed for the other portions of the element. We refer you to Article 6, Section 6468 of the Housing Element Guidelines which describes the citizen participation process required for housing elements prepared according to the 1977 Guidelines.

2. Manufactured Housing

Government Code Section 65852.3 and Health and Safety Code Section 18300 (SB 1960) which becomes operative on July 1, 1981 provides for the placement of mobilehomes in single-family residential zones. The law declares that a City (including a Charter City) or county shall not prohibit the installation of mobilehomes on a permanent foundation on lots zoned for single-family dwellings. However, a locality may comply with this requirement by designating certain lots zoned for single-family dwellings for mobilehome use, which lots are determined to be compatible for mobilehome use. Mobilehomes are not to be subject to more restrictive development standards than apply to conventional single-family dwelling; however, these standards cannot have the effect of totally precluding mobilehomes.

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Housing Element Law requires that in order to meet identified housing needs, the Housing Element must identify adequate sites which will be made available through appropriate zoning and development standards for the development of housing for all income levels, including factory built and mobilehomes. In San Francisco's element, it is noted on page 15 and 17 of the "Need" section (Part I) that there are 2840 existing vacant parcels zoned for residential use which could produce approximately 4300 units. The Housing Element must also include a discussion of how the City intends to comply with the adequate sites provision. As part of this discussion it is important to indicate the kinds of parcels that could be utilized for non-market rate housing, including sites suitable for mobilehomes and manufactured housing.

3. Environmental Review

State of California EIR guidelines (Title 14, Division 6 of the California Administrative Code) indicate that local housing elements are projects subject to the California Environmental Quality Act. Therefore, an initial study and negative declaration or environmental impact report must be prepared and filed with appropriate agencies prior to the adoption of a local Housing Element.

4. Coastal Zone

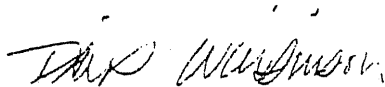
Since a portion of the City is located within the Coastal Zone, that area is subject to the provisions of Section 30213 of Coastal Act. The requirements of the Act differ from those for Housing Elements (Section 65302(c) and the Housing Element Guidelines) thus the adoption of a housing element pursuant to Section 65302(c) may not assure compliance with the housing provisions of the coastal mandate to "protect, encourage and where feasible, provide" housing for persons of low and moderate income.

We want to advise localities which intend to comply with the provisions in Article 10.6 of Chapter 4 of the Government Code (AB 2-853) by adopting a housing element that conforms to the 1977 Housing Element Guidelines that the required revisions noted in this review and subsequent adoption of the document should be accomplished by October 1, 1981. The new statute requires that after this date, housing elements are to be prepared in accordance with the standards in the statute as opposed to the Guidelines. Thus, jurisdictions which have not adopted elements in accordance with the Guidelines prior to October 1 may have to amend their elements in order to conform to the new statute.

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In summary, the City and County of San Francisco's adopted housing element demonstrates a concern and a high level of effort in addressing the housing needs within the community. We have noted several revisions that should be made for the Element to comply with State Housing Element Law. If you have any questions, please contact Melanie Freitas at (408) 423-3546 or Maxene Spellman at (916) 323-6174.

Sincerely,



David Williamson
Supervisor, Review Section

cc: George A. Williams Assistant Director
San Francisco Department of City Planning
Revan Tranter, ABAG
Norbert Dall, Executive Director
Alliance for Coastal Management
San Francisco Information Clearinghouse
Mr. Hiram E. Smith, Executive Director
S.F. Neighborhood Legal Assoc. Foundation
Mr. Alberto Suldamando, Executive Director
California Rural Legal Assistance, S. F.

ATT. C

Memorandum

Ray Banion
State Board of Control

Date: July 9, 1981

Telephone: ATSS ()
()

From : Governor's Office
Office of Planning and Research - Jay Stewart *QRS*

Subject : Housing Element Claims

In response to your June 5, 1981 request for OPR recommendations on the Los Angeles County and San Francisco housing element claims, this office has no comments. The Department of Housing and Community Development is representing the Administration on this matter.

SECTION II – C

Test Claims

<u>Claimant</u>	<u>Date Filed</u>
City of El Monte (SB90-3916)	7-7-81
City and County of San Francisco (SB90-3760)	2-19-81
County of Los Angeles (SB90-3760)	2-19-81
<u>(Housing Element: Locality's Share of Regional Housing Need.)</u>	

Alleged Mandate: Chapter 1143, Statutes of 1980

Authority:

Revenue and Taxation Code Section 2253(c), governing chaptered legislation containing neither an appropriation for nor a disclaimer of mandated costs,

Statement of Claim

The Claimant alleges that AB2853 mandates an "increased level of service" upon local agencies by requiring that, among other things, counties and cities 1) plan for meeting their "appropriate share of the regional demand for housing"; 2) revise the Housing Elements of their General Plans to reflect their "appropriate share"; 3) revise their Housing Elements at least every five years; and 4) as a result of these requirements, review their General Plans which must remain "internally consistent".

The Claimants allege that the incurred \$81,560.00 during the 1980-81 F.Y.

Department Recommendations1. El Monte:

The Department of Finance (DOF) recommends that the Board determine that no reimbursable mandate exists in Chapter 1143/80 because the statute in question merely codifies existing requirements of the California Administrative Code (CAC). (See Attachment "A-1")

The Department of Housing and Community Development (HCD) recommends that the Board determine that no reimbursable mandate exists because the statute in question does not increase service levels above those required prior to Jan. 1, 1973. (See Attachment "B-1")

The Governor's Office of Planning and Research (OPR) has identified the Department of Housing and Community Development as the "Administration representative" concerning housing element test claims. (See Attachment "C")

2. San Francisco:

DOF recommends that the Board find that no reimbursable mandate exists because the statute in question merely codifies existing CAC regulations (See Attachment "A-2")

HCD recommends that the Board deny the claim because "the City and County of San Francisco adopted a Housing Element in December 1980 pursuant to Government Code Section 65302(c) and the Housing Element Guidelines. HCD states that this can be accomplished without incurring new cost; and if accomplished prior to October 1, 1981, the City and County will be in compliance with AB2853 before its operative date. (See Attachment "B-2") OPR indicates that HCD is representing the Administration on this matter." (See Attachment "C")

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3. Los Angeles

DOF recommends that the Board determine no reimbursable mandate exists, because the statute in question merely codifies existing CAC regulations. (See Attachment "A-3")

HCD recommends that the Board deny the claim because Los Angeles County adopted a Housing Element on November 20, 1980 pursuant to the Housing Element Guidelines, thereby gaining exemption from the provisions of AB2853, pursuant to section 65586. (See Attachment "B-2")

OPR states that HCD represents the Administration on this matter. (See Attachment "C")

Staff Analysis

As the Board will note, substantial evidence has been presented by the claimants and HCD concerning AB2853. Rather than address all the points raised, staff would prefer to identify the major issues raised, which are:

1. Whether Los Angeles County and San Francisco City and County are, in fact, required to do anything under AB2853? The claimants have indicated that, even with approved Housing Elements, they are still required to review the Elements every five years, pursuant to Section 65588(b). (See Los Angeles County rebuttal, behind Los Angeles test claim) The Board may wish to seek clarification from HCD on this point.

2. Whether the requirement to incorporate the "appropriate share of the regional demand for housing" constitutes an "increased level of service"? Revenue and Taxation Code Section 2207(a) provides that "costs mandated by the state" are incurred whenever "any law enacted after January 1, 1973... mandates... an increased level of service of an existing program."

: At issue here is whether Housing Guidelines adopted by HCD and the claimants cite case law and legal opinions supporting either determination. (for claimant's arguments, see behind El Monte test claim.) Bounds v. Glendale (See Attachment "D") clearly declares that HCD's Guidelines are optional; HCD argues that this decision is not precedential and cites the contrary finding in Stocks v. Irvine that the Guidelines are mandatory.

Although staff cannot discern these arguments clearly enough to recommend a determination, it is suggested that the Board consider whether there exists "an increased level of service" even if the HCD Guidelines, as they existed prior to January 1, 1973, are considered mandatory? If so, then (See Attachment "B-3") no reimbursable mandate would exist.

If not, then a reimbursable mandate would exist; however, the Board may wish to enquire further whether AR2853 exceeds the requirements of the 1979 Housing Guidelines (See Attachment "B-4")? If so, then a reimbursable mandate would exist in AB2853. If not, then the mandate may exist in the 1979 Housing Guidelines rather than AB2853.

Staff suggests these inquiries because there appear to be substantial differences in terminology, format, and content between the 1971 Guidelines (pre-'73) and the 1979 Guidelines concerning the issue of "appropriate share" allocation.